

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Environmental Preservation Committee

BILL: CS/SB 2510

INTRODUCER: Environmental Preservation Committee and Senator Haridopolis

SUBJECT: Florida Incentive-based Permitting Act

DATE: April 25, 2006

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Branning</u>	<u>Kiger</u>	<u>EP</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This committee substitute creates the Florida Incentive-based Permitting Act. The act declares that a permit applicant's history of compliance with applicable conditions and requirements of a permit and the environmental laws of this state is a factor that should be considered when the Department of Environmental Protection (DEP) is considering whether to issue or reissue a permit to an applicant, based on compliance incentives. The committee substitute creates a program that provides for Level 1 and Level 2 incentives. These incentives would include longer duration permits, expedited permit reviews, and short-form permit renewals.

DEP shall develop rules associated with Level 1 and Level 2 incentives. DEP is encouraged to provide notice to permit applicants on the incentive-based components.

The incentive-based permitting program would apply to all permits issued under ch. 403, F.S., to coastal construction permitting activities permitted under ch. 161, F.S., and to certain stormwater management systems permits issued under ch. 373, F.S.

This committee substitute substantially amends the following sections of the Florida Statutes: 161.041, 373.413, and 403.087.

The committee substitute creates the following section of the Florida Statutes: 403.0874.

II. Present Situation:

Florida regulates the impacts of certain activities on the environment primarily through three chapters of the Florida Statutes – 403, 161, and 373.

Section 403.087, F.S., provides the general authority for the Department of Environmental Protection (DEP) to issue permits for stationary installations that are reasonably expected to be sources of air or water pollution. The department is provided with the authority to permit the operation, maintenance, construction, expansion or modification of these facilities. Permits may be issued for no longer than 10 years, and operation permits issued after July 1, 1992, for major sources of air pollution have a fixed term of no more than 5 years. The DEP has rulemaking authority to adopt, amend, or repeal rules related to the issuance, denial, modification or revocation of permits issued under this section.

Section 403.087, F.S., also provides that the renewal of operation permits for wastewater treatment facilities other than those regulated under the National Pollutant Discharge Elimination System (NPDES) Program must be issued for term of up to 10 years, and must be issued for the same cost and under the same conditions as a 5-year permit, if the applicant can meet certain conditions. Also, the DEP is required to issue permits for the construction, operation, maintenance, expansion, or modification of installations expected to be sources of pollution only when the agency determines that the installation is provided or equipped with pollution control facilities that will abate or prevent pollution in accordance with standards or rules adopted by the agency.

Subsection (6) of s. 403.087, F.S., contains the fee structure for permits issued by the DEP including but not limited to hazardous waste construction or operating permits, injection well construction permits, solid waste construction or operating permits, domestic waste construction or operating permits, and drinking water distribution system permits.

Many of the environmental permits issued under ch. 373, F.S., are issued by the water management districts.

Parts I and II of ch. 161, F.S., are known as the “Beach and Shore Preservation Act.” This act was created to protect, preserve, and manage Florida’s 825 miles of sandy coastline fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida. Any coastal construction, reconstruction of existing structures, or physical activity undertaken specifically for shore protection purposes upon sovereignty lands of Florida requires a coastal construction permit issued by DEP.

Currently, s. 403.087,(3), F.S., provides limited financial incentives for the permitting of domestic wastewater treatment facilities other than those regulated under the NPDES Program if certain conditions are met.

Rule 62-4.070(5), F.A.C., provides that the DEP must take into consideration a permit applicant’s violation of any department rules at any installation when determining whether the applicant has provided reasonable assurances that department standards will be met.

III. Effect of Proposed Changes:

Section 1 creates s. 403.0874, F.S., the Florida Incentive-based Permitting Act. The act declares that a permit applicant’s history of compliance with applicable conditions and requirements of a permit and the environmental laws of this state is a factor that should be considered when the

Department of Environmental Protection (DEP) is considering whether to issue or reissue a permit to an applicant, based on compliance incentives under this section. The DEP is encouraged to work with permittees and permit applicants to encourage compliance and avoid burdensome and expensive consequences of noncompliance. The bill defines the following terms: “agency,” “applicant,” “environmental laws,” “regulated activity,” and “site.”

The bill provides for Level 1 and Level 2 compliance incentives. In order to obtain the compliance incentives, the applicant must affirmatively request the incentives as part of the permit application. Unless otherwise prohibited by state or federal law, agency rule, or federal regulation, and if the applicant meets all other applicable criteria for the issuance of a permit, any applicant who meets the criteria specified in this bill, is entitled to the following incentives:

Level 1

An applicant shall be entitled to incentives at a site:

- If the activity is a new regulated activity; and
- The applicant conducted a similar activity under an agency permit for at least 4 of the 5 years preceding submittal of the permit application.

An applicant is not entitled to incentives if the applicant has a relevant compliance history for a similar regulated activity that includes any violation that resulted in enforcement action. If the applicant has alleged violations at a different site that may result in enforcement action and the alleged violations may result in the potential for harm to human health or the environment, the applicant shall not be entitled to these incentives. However, when pending alleged violations that eliminate an applicant from receiving these incentives are disposed of and the applicant was found not to have committed the alleged violation, incentives shall be available to the applicant. Alleged minor violations shall not be considered.

Level 1 incentives include:

- Expedited permit review. The processing time following receipt of a completed application shall be 75 days for the issuance of the agency action.
- Extended permits. Permits may be extended for 7 years, provided the applicant has conducted a similar regulated activity at a site for 4 of the last 5 years.

Within 6 months after the effective date of this bill, the DEP shall initiate rulemaking to implement Level 1 incentives. The rule shall specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 1 incentives are not available to permit applicants.

Level 2

Level 2 incentives are available to an applicant if the applicant conducted a regulated activity at the site in this state for 4 of the last 5 years preceding submittal of an application for renewal. An applicant is not entitled to these incentives if the applicant has a relevant compliance history at the site that includes any violation that resulted in enforcement action. If the applicant has alleged violations at the site that may result in enforcement action and the alleged violations may result in the potential for harm to human health or the environment, the applicant shall not be entitled to these incentives. However, when pending alleged violations that eliminate an applicant from receiving these incentives are disposed of and the applicant was found not to have

committed the alleged violation, incentives shall be available to the applicant. Alleged minor violations shall not be considered. An applicant for the renewal of a permit shall be entitled to these incentives if the applicant takes any other actions not otherwise required by law that at the site result in:

- Beneficial reductions in actual or permitted discharges or emissions;
- Beneficial reductions on the impacts of regulated activities on public lands or natural resources;
- Beneficial waste reduction or the reuse of waste generated at the site;
- Implementation of a voluntary environmental management system; or
- Other similar actions as determined by DEP rule.

Level 2 incentives shall include:

- 10-year permits, if the applicant has conducted a regulated activity at the site for at least 5 years.
- Fewer routine inspections other than regulated activities similarly situated.
- Short form renewals of permits not involving substantial modifications which may be made upon a shortened application form specifying only the changes in the regulated activity or a certification by the applicant that no changes in the regulated activity are proposed if that is the case. This provision shall supplement any expedited review process provided by agency rules.
- Expedited review of requests for permit modifications.
- Agency recognition, program-specific incentives, or certification in lieu of renewal permits.
- No more than two requests for additional information.

Within 6 months after the effective date of this bill, the DEP shall initiate rulemaking to implement Level 2 incentives. The rule shall specify what incentives will be made available, how applicants may qualify for incentives, and how extended permits may be transferred. Until an implementing rule is adopted, Level 2 incentives are not available to permit applicants under this bill.

Sections 2 and 3 amend ss. 161.041 and 373.413, F.S., to apply the Incentive-based Permitting Program to all permits issued under those sections. Section 161.041, F.S., provides for certain coastal construction permits. Section 373.413, F.S., provides for permits for certain stormwater management systems.

Section 4 amends s. 403.087, F.S., to provide that the DEP may revoke any permit if it finds that the permitholder:

- Has submitted material false or inaccurate information in the application for the permit;
- Has violated laws, department orders, rules, or regulations, or conditions directly related to the permit;
- Has failed to submit operational reports or other information required by department rule or regulation directly related to the permit; or
- Has refused lawful inspection at the facility authorized by the permit.

The incentive-based permitting program provisions apply to permits issued under ch. 403, F.S.

Section 6. The bill would take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by s. 18, Art. VII, State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Permitholders could experience significant cost savings associated with obtaining and renewing permits. Permits would be issued faster, and in some cases, may be automatically renewed.

C. Government Sector Impact:

The DEP could incur costs associated with rulemaking for the incentive program.

The DEP has indicated that the implementation of an incentive-based program as provided in this bill could impact the department's permitting efforts. The department estimates that the majority of permit applicants may qualify for the proposed compliance incentives and that the time for department review of permits would be reduced significantly. As a result, the department has indicated that without a corresponding increase in permitting staff, there may be more default permits, more poorly crafted permits, or more permit denials. The funding the department receives from permit fees may be reduced.

The DEP has also expressed concern that the incentive-based permitting program provided by the bill could make it difficult for the department to revoke any permit, even in those cases where a permittee has committed numerous violations of rules or permit conditions, or where the permittee has submitted false information on the application.

The DEP has indicated that it is supportive of a true performance-based permitting system, where the good actors are rewarded and the bad actors take responsibility for the consequences of their actions.

Some local government permitting programs may be affected by this bill. Some of the larger counties have been authorized to carry out a variety of the state's environmental programs through delegations or contracted programs. To continue to administer those delegated or contracted programs, the local government may have to amend their local ordinances to provide for an incentive-based permitting program.

Certain federal programs that the state administers would be excluded from the incentive programs if the federal law or regulation would otherwise prohibit those incentives. For example, Title V air permits are restricted under federal rules to 5 years in length, so the extended permit incentives would not apply to those air permits. The DEP has several programs which operate under an approval or delegation from the Environmental Protection Agency (EPA) and those programs were approved based upon the ability of the department to properly implement the federal programs. If the DEP's ability to enforce programs, by denying permits to irresponsible actors and revoking permits of violators, is restricted in the manner proposed by this bill, the program would not be consistent with federal law and the EPA may take back the approval or delegation.¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹ Ibid.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
